

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Timothy Wayne Connors,

Petitioner

V.

Warden Brian E. Williams, Sr., et al.,

## Respondents

Case No.: 2:15-cv-01351-JAD-CWH

## **Order Denying Motions to Stay and Withdraw and Granting Motion for Extension of Time**

[ECF Nos. 18, 19, 21]

10 Timothy Wayne Connors filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 on  
11 July 16, 2015.<sup>1</sup> Connors's counsel filed a second unopposed motion for extension of time to file a  
12 first-amended petition,<sup>2</sup> a motion to stay the proceedings,<sup>3</sup> and a motion to withdraw as counsel of  
13 record.<sup>4</sup>

I first address the motion to stay proceedings.<sup>5</sup> A jury convicted Connors of first-degree murder and robbery.<sup>6</sup> His brother Christopher was his co-defendant at trial. Christopher filed a federal habeas petition, which was denied on the merits. But Christopher was granted a certificate of appealability for all three grounds in his petition,<sup>7</sup> which all involve a so-called *Kazalyn* first-degree murder jury instruction given at the Connors brothers' trial.<sup>8</sup> Christopher's appeal—petitioner

20 ||<sup>1</sup> ECF No. 1.

21 ||<sup>2</sup> ECF No. 18.

22 | <sup>3</sup> ECF No. 19.

23 | <sup>4</sup> ECF No. 21.

24 | <sup>5</sup> ECF No. 19.

25 | <sup>6</sup> *Id.* at 2.

<sup>26</sup> <sup>7</sup> See Case No. 3:07-cv-00268-JCM-VPC, ECF No. 68.

<sup>27</sup> ¶<sup>8</sup> ECF No. 19 at 7–9.

1 represents—is pending before the Ninth Circuit Court of Appeals.<sup>9</sup> Petitioner now explains that he  
2 seeks a stay under *Rhines v. Weber*<sup>10</sup> or a stay in light of “what may or could be binding precedent  
3 upon his case as he was tried together with his brother/co-defendant . . . and was subject to the same  
4 *Kazalyn* instruction.”<sup>11</sup>

5       *Rhines v. Weber* addresses the failure to exhaust state remedies before bringing a federal  
6 petition for habeas relief. In *Rhines*, the Supreme Court placed limitations on the discretion of the  
7 court to facilitate habeas petitioners’ return to state court to exhaust claims:

8       [S]tay and abeyance should be available only in limited circumstances. Because  
9 granting a stay effectively excuses a petitioner’s failure to present his claims first to  
the state courts, stay and abeyance is only appropriate when the district court  
10 determines there was good cause for the petitioner’s failure to exhaust his claims first  
in state court. Moreover, even if a petitioner had good cause for that failure, the  
district court would abuse its discretion if it were to grant him a stay when his  
11 unexhausted claims are plainly meritless.<sup>12</sup>

12       Respondents oppose Connors’s motion for stay: because Connors asserts that all seven  
13 grounds in his current petition are exhausted,<sup>13</sup> a *Rhines* stay is unavailable. I agree. The appropriate  
14 action at this time is for Connors, through counsel, to file his amended petition, setting forth all  
15 known grounds, regardless of exhaustion. Once a first-amended petition has been submitted, the  
16 parties may then litigate timeliness, exhaustion, and any other procedural issues. Accordingly,  
17 because Connors has not demonstrated that a stay is appropriate at this time, his motion to stay is  
18 denied.

19       Next, I consider Connors’s counsel’s motion to withdraw.<sup>14</sup> Counsel asserts that she has  
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21 <sup>9</sup> ECF No. 19-4.

22 <sup>10</sup> See *Rhines v. Weber*, 544 U.S. 269 (2005).

23 <sup>11</sup> ECF No. 19-4.

24 <sup>12</sup> *Rhines*, 544 U.S. at 277 (citing by analogy 28 U.S.C. § 2254(b)(2) (“An application for a writ of  
habeas corpus may be denied on the merits, notwithstanding the failure of the applicant to exhaust the  
25 remedies available in the courts of the State”)).

26 <sup>13</sup> ECF No. 20.

27 <sup>14</sup> ECF No. 21.

1 good cause to withdraw under Local Rule IA 11-6 because she is currently serving as court-  
2 appointed counsel in too many cases.<sup>15</sup> Connors dispatched the instant habeas petition for mailing on  
3 July 13, 2015.<sup>16</sup> His motion for appointment of counsel was granted on October 1, 2015, and the  
4 Federal Public Defender was appointed.<sup>17</sup> The Federal Public Defender filed a notice of conflict of  
5 interest, and on April 25, 2016, Julian Gregory was appointed as CJA counsel.<sup>18</sup> On July 5, 2016,  
6 Julian Gregory filed a motion to withdraw as counsel, explaining that he had learned of a potential  
7 conflict because when he worked with the Federal Public Defender, he may have represented  
8 co-defendant Christopher Connors.<sup>19</sup> Gregory's motion to withdraw was granted and on July 28,  
9 2016, and current counsel Angela Dows was appointed.<sup>20</sup> Since being appointed as Connors's  
10 counsel, Dows has filed two unopposed motions for extension of time to file an amended petition,<sup>21</sup> a  
11 motion for stay,<sup>22</sup> and a motion to withdraw as counsel due to her caseload.<sup>23</sup>

12 Dows has not provided a compelling basis to withdraw at this point, especially in light of the  
13 time that has already passed since this habeas matter was initiated. Thus, the motion to withdraw is  
14 denied at this time, and Dows is directed to file an amended petition within 45 days containing all  
15 known grounds for relief. Once an amended petition is filed, if Dows continues to believe that she  
16 should withdraw, she may renew her motion, providing compelling reasons.

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19 <sup>15</sup> *Id.* at 3–4.

20 <sup>16</sup> ECF No. 8.

21 <sup>17</sup> ECF No. 7.

22 <sup>18</sup> ECF No. 11.

23 <sup>19</sup> ECF No. 13.

24 <sup>20</sup> ECF No. 14.

25 <sup>21</sup> ECF Nos. 16, 18.

26 <sup>22</sup> ECF No. 19.

27 <sup>23</sup> ECF No. 21.

1 Accordingly, IT IS HEREBY ORDERED that:

2 • Petitioner's motion to stay the proceedings [ECF No. 19] is DENIED;

3 • Counsel's motion to withdraw [ECF No. 21] is DENIED; and

4 The second motion for extension of time to file an amended petition [ECF No. 18] is

5 **GRANTED.** Dows has 45 days to file an amended petition that includes all known grounds for  
6 relief (both exhausted and unexhausted). Respondents have 30 days after the filing of the amended  
7 petition to answer or otherwise respond to the amended petition. The response must comply with  
8 Habeas Rule 5. Any procedural defenses must be raised together in a single, consolidated motion to  
9 dismiss. Procedural defenses omitted from a motion to dismiss may be deemed waived.

10 Respondents may not file a response in this case that consolidates their procedural defenses, if any,  
11 with their response on the merits, except under 28 U.S.C. § 2254(b)(2) as to any unexhausted claims  
12 clearly lacking merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2),  
13 they must: (a) do so within the single motion to dismiss and not in the answer; and (b) specifically  
14 direct their argument to the standard for dismissal under § 2254(b)(2) as set forth in *Cassett v.*  
15 *Stewart*.<sup>24</sup> In any answer filed on the merits, respondents must specifically cite to and address the  
16 applicable state court written decision and state court record materials, if any, regarding each claim  
17 within the response as to that claim.

18 Connors will have 30 days from service of the answer, motion to dismiss, or other response,  
19 to file a reply or opposition; all other requests for relief by respondents by motion will be subject to  
20 the normal briefing schedule under the local rules.

21 Any additional state court record exhibits filed by either party must be filed with a separate  
22 index of exhibits identifying the exhibits by number. The CM/ECF attachments that are filed must  
23 be identified by the number or numbers of the exhibits in the attachment.

24 The parties must send courtesy copies of all exhibits to the Clerk of Court at the Reno  
25 Division at 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney"

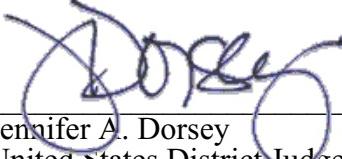
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27 <sup>24</sup> See *Cassett v. Stewart*, 406 F.3d 614, 623–24 (9th Cir. 2005).

1 on the outside of the mailing address label.

2 DATED May 9, 2017.

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5 Jennifer A. Dorsey  
6 United States District Judge  
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